

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

HYSITRON INCORPORATED,
a Minnesota corporation,

Plaintiff,

v.

MTS SYSTEMS CORPORATION,
a Minnesota corporation,

Defendant.

Civil No. 07-cv-01533 (ADM/AJB)

**AFFIDAVIT OF
WILLIAM A. MCNAB IN
SUPPORT OF DEFENDANT'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

William A. McNab, being first duly sworn on oath, states as follows:

1. I am a shareholder in the law firm of Winthrop & Weinstine and represent Defendant MTS Systems Corporation ("MTS") in the above-captioned matter.

2. Attached hereto as Exhibit 1 is a true and correct copy of an unreported decision in *Edina Realty, Inc. v. TheMLSOnline.com*, 2006 WL 737064 (D. Minn. Mar. 20, 2006).

3. Attached hereto as Exhibit 2 is a true and correct copy of an unreported decision in *Gov't Employees Ins. Co. v. Google, Inc.*, 2005 WL 1903128 (E.D. Va. Aug. 8, 2005).

4. Attached hereto as Exhibit 3 is a true and correct copy of an unreported decision in *Hamzik v. Zale Corp.*, 2007 WL 1174863 (N.D.N.Y. Apr. 19, 2007).

5. Attached hereto as Exhibit 4 is a true and correct copy of an unreported decision in *Lorillard Tobacco Co. v. Engida*, 2007 WL 39207 (10th Cir. Jan. 8, 2007).

6. Attached hereto as Exhibit 5 is a true and correct copy of an unreported decision in *MyGym, LLC v. Engle*, 2006 WL 3524474 (D. Utah Dec. 6, 2006).

7. Attached hereto as Exhibit 6 is a true and correct copy of an unreported decision in *Nautilus Group, Inc. v. Icon Health & Fitness, Inc.*, 2006 WL 3761367 (W.D. Wash. Dec. 21, 2006).

FURTHER AFFIANT SAYETH NAUGHT.

Dated: April 14, 2008

s/William A. McNab
William A. McNab

Subscribed and sworn to before me
this 14th day of April, 2008.

s/Barbara J. Kogler
Barbara J. Kogler
Notary Public—Minnesota
My Commission Expires: January 31, 2011
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